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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2020-0016]

Meetings to Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding a series of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES: The first meeting took place on Wednesday, November 17, 2021, from 11 a.m. to 12 p.m. Eastern Time (ET). The second meeting will take place on Wednesday, December 1, 2021, from 10:30 a.m. to 11 a.m. ET. The third meeting will take place on Thursday, December 2, 2021, from 1 p.m. to 2:30 p.m. ET. The fourth meeting will take place on Wednesday, December 15, 2021, from 10:30 a.m. to 11 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212-1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of "voluntary agreements and plans of action" with representatives of industry, business, and other interests to help provide for the

national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID-19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the *Federal Register* a "Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic" (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID-19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID-19 (PPE Plan of Action) – was finalized.[5] The PPE Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the PPE Plan of Action.

On May 24, 2021, four additional plans of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and

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[1] 50 U.S.C. 4558(c)(1).
[2] 85 FR 18403 (Apr. 1, 2020).
[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).
[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the *Federal Register* on the same day. 85 FR 50049 (Aug. 17, 2020).
[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID-19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID-19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID-19, and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID-19 – were finalized.[6] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID-19 – was finalized.[7] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the first, second, and fourth meetings are as follows:

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[6] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).
[7] *See* 86 FR 57444 (Oct. 15, 2021).

1. Meet the Sub-Committee for Oxygen under the Medical Gases Plan of Action to establish priorities related to the COVID-19 response under the Voluntary Agreement.
2. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness related to the Sub-Committee for Oxygen.
3. Identify potential Objectives and Actions that should be completed under the Sub-Committee for Oxygen.
4. Identify pandemic-related information gaps and areas that merit sharing by holding recurring meetings of the Sub-Committee for Oxygen with key stakeholders.

Meeting Objectives: The objectives of the third meeting are as follows:

1. Convene the Sub-Committee to Define Requirements under the previously-established Medical Devices Plan of Action to assess its status related to COVID-19 response under the Voluntary Agreement.
2. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.
3. Identify pandemic-related supply chain issues, information gaps, and areas for potential additional discussion.
4. Identify potential Objectives and Actions which correspond to Sub-Committees. These will be held for further discussion under those Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[8] However, attendance may be limited if the Sponsor[9] of the voluntary agreement finds that the matter to be discussed

[8] *See* 50 U.S.C. 4558(h)(7).
[9] "[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action." 50 U.S.C. 4558(h)(7).

at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be prematurely released to the public. A premature public disclosure of a private sector participant's information could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly frustrate the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator,

Federal Emergency Management Agency.

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